

ITALY

Elena Bargelli

Cassazione Civile (Cass.), Sez. I, 16 May 2016

- **May a US judgment awarding punitive damages be recognized under Italian law? Does it violate the international public order?**

FACTS

A motorcycle racer suffered serious personal injuries due to the defect of the crash helmet produced by the Italian company Axo and sold by the American company Nosa.

Nosa accepted the compromise agreement. The Court of Florida ruled that the producer (the Italian company Axo) had to reimburse Nosa the paid sum (\$ 1,436,136 plus annual interest of 11%, \$ 106,500 for legal expenses and 8% interest, \$ 9,000 for further legal expenses and interest).

In 2014 the court of appeal of Venice upheld Nosa's claim for the recognition of the judgment

PRECEDENTS: NO RECOGNITION OF PUNITIVE DAMAGES

- Cass. No. 1183/2007 (\$ 1,000,000)
- Cass. No. 1781/2012 (\$ 5,000,000)
- Cass., Plenary Session, No. 15350/2015

'REASONABLENESS AND PROPORTIONALITY TEST'

According to this test, in the present case the American judgment could not be enforced

JUDGEMENT: NO RULING – REFERENCE TO THE GRAND CHAMBER

- International public order: fundamental rights common to foreign countries and protected by international charters; internal legal rules which are not enshrined in the Italian Constitution not included!
- Compensative function as prevailing in tort law. However, it does not play an exclusive role. The Cassazione quotes the opinion which revitalizes the deterrent function as the most appropriate to effectively protect fundamental rights.